

4-341A02

December 5, 1984

No.

Date DEC 6 1984

The Secretary
Interstate Commerce Commission
Washington, DC 20423

Fee \$ 10.00

ICC Washington, D.C.

INTERSTATE COMMERCE COMMISSION

Western Fuels Association, Inc.,
Equipment Lease dated as of December
5, 1984.

RECORDATION NO. Filed 1625

Dear Secretary:

DEC 6 1984 10 22 AM

Enclosed herewith for filing pursuant to 49 U.S.C. § 10106, Interstate Commerce Commission an Equipment Lease dated as of December 5, 1984 between Heleasco Twenty-Three, Inc., as Lessor, and Western Fuels Association, Inc., as Lessee, relating to the lease of 47 Open Top Gondola Railcars by Western Fuels Association, Inc., and bearing identifying numbers WFAX 84654 to and including WFAX 84700. The parties to the enclosed Equipment Lease are:

Western Fuels Association, Inc.
700 Jefferson Building
1225 - 19th Street, N.W.
Washington, DC 20036

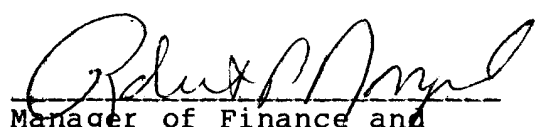
and

Heleasco Twenty-Three, Inc.
3411 Silverside Road
Weldin Building, Suite 201
Wilmington, Delaware 19810

Please record one of the three enclosed copies of the Equipment Lease and stamp the other two copies and the two copies of this letter enclosed herewith with the recordation date and return such copies to the undersigned in the enclosed pre-addressed, stamped envelope. A check in the amount of \$30 is enclosed in payment of the applicable recording fee.

Very Truly Yours,

WESTERN FUELS ASSOCIATION, INC.

By: 
Manager of Finance and
Administration

Man w. Lamm
Robert P. Myers

Interstate Commerce Commission
Washington, D.C. 20423

12/6/84

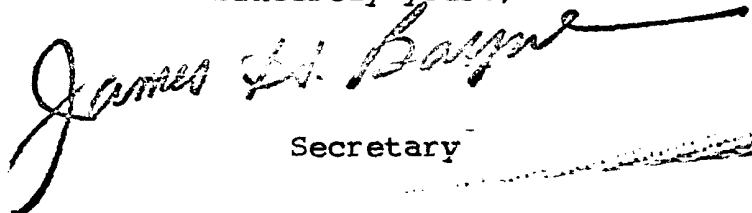
OFFICE OF THE SECRETARY

Robert P. Norrgard
Western Fuels Association)
700 Jefferson Building
1225 19th St. N.W.
Washington, D.C. 20036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/6/84 at 10:35am and assigned re-recording number(s). 14495 & 14495-A

Sincerely yours,


Secretary

Enclosure(s)

MASTER

14495

EQUIPMENT LEASE

DEC 8 1984

INTERSTATE COMMERCE COMMISSION

BETWEEN

HELEASCO TWENTY-THREE, INC.

Lessor

and

WESTERN FUELS ASSOCIATION, INC.

Lessee

Dated as of December 5, 1984

(Three Locomotives Manufactured by Morrison-Knudson, 136 Rapid Discharge Hopper Cars and 47 Open Top Gondola Cars Manufactured by Orther Freight Car Company, and Certain Mining Equipment)

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EQUIPMENT LEASE

THIS EQUIPMENT LEASE ("Lease") dated as of December 5, 1984, is between HELEASCO TWENTY-THREE, INC., a Delaware corporation, (the "Lessor"), and WESTERN FUELS ASSOCIATION, INC., a Wyoming corporation (the "Lessee").

R E C I T A L S:

WHEREAS, the Lessor, the Lessee, and the Wichita Bank for Cooperatives, a cooperative corporation organized under the laws of the United States of America (the "Note Purchaser"), have entered into a Participation Agreement (the "Participation Agreement") dated as of the date hereof providing for the leveraged lease financing of the units of railroad and other equipment listed on Schedule A hereto (the "Equipment");

WHEREAS, the Participation Agreement contemplates that the Lessor and the Lessee will enter into purchase order assignments (the "Purchaser Order Assignments") with certain manufacturers or suppliers (collectively, the "Manufacturers") and will receive from the Lessee bills of sale in favor of the Lessor wherein the Manufacturers and Lessee will sell and deliver to the Lessor certain units of the Equipment (hereinafter called the "Units"), all as more particularly described in the Participation Agreement;

WHEREAS, the Units of Equipment identified on SCHEDULE A hereto as the "First Delivery Date Equipment" constitutes all of

the Units of Equipment which have been accepted by the Lessee on or prior to the date hereof (the "First Delivery Date");

WHEREAS, the Units of Equipment identified on SCHEDULE A hereto as the "Second Delivery Date Equipment" constitutes all of the Units of Equipment which are scheduled to be accepted by the Lessee on or ~~prior to~~ December 19, 1984 (the "Second Delivery Date");

WHEREAS, the Lessor has assigned all of its rights hereunder and in certain related agreements (excepting Excepted Rights in Collateral, as defined in the Security Agreement as hereinafter defined) and granted a security interest in the Equipment to the Note Purchaser under a Security Agreement to be dated the date hereof (such agreement being hereinafter called the "Security Agreement");

WHEREAS, the Lessee desires to lease all the Units of the Equipment at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS, capitalized terms used herein which are not otherwise defined shall have the meanings given to such terms in the Participation Agreement;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the parties hereto hereby agree as follows:

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease. Subject to the terms and conditions set forth herein and the Participation Agreement, Lessee hereby leases from the Lessor and Lessor hereby lets to the Lessee the Units of First Delivery Date Equipment, and, upon satisfaction of all conditions set forth in Section 4.2 of the Participation Agreement the Lessee shall lease from the Lessor and the Lessor shall let to the Lessee the Units of Second Delivery Date Equipment, for the rentals and subject to the terms and conditions herein set forth.

1.2. Certificate of Acceptance. Concurrently with the execution of this Lease, Lessee shall execute and deliver a Certificate of Acceptance in substantially the form attached hereto as SCHEDULE B (a "Certificate of Acceptance") and a rental schedule in the form attached hereto as SCHEDULE C (a "Rental Schedule") with respect to the First Delivery Date Equipment. Upon satisfaction of all conditions set forth in Section 4.2 of the Participation Agreement, the Lessee shall execute and deliver a Certificate of Acceptance and a Rental Schedule with respect to the Units of Second Delivery Date Equipment. The execution and delivery by the Lessee of a Certificate of Acceptance and Rental Schedule with respect to any Units shall be considered as a supplement to this Lease and conclusively establishes that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer or supplier of any of such Units or components of such Units, such Units are acceptable to and accepted

by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Units are in good condition and appear to conform to the specifications applicable thereto. By execution and delivery of a Certificate of Acceptance by the Lessee, the Lessee represents that it has no knowledge of any such defect in the Units identified therein.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Units. The rental payments due from the Lessee under this Lease shall be classified as "Fixed Rental", or "Interim Rental" or "Supplemental Rent" as defined in Section 5.3 hereof. "Interim Rental" shall mean the rental payment due from Lessee under this Lease for use of all Units for the period commencing on the date of execution of a Certificate of Acceptance and Rental Schedule relating to such Units and ending on the date prior to the Basic Term Commencement Date (the "Interim Period"). "Fixed Rental" shall mean all rental payments due from the Lessee under this Lease, for the use of the Units for the period commencing on the Basic Term Commencement Date and ending on the termination of this Lease. Payments of Fixed Rental, Interim Rent and Supplemental Rent are sometimes referred to herein, collectively, as payments of "Rental."

(a) Interim Rental shall be due and payable on December 31, 1984 in an amount equal to the product obtained by multiplying (i) the daily equivalent of 11.25% per annum

Equipment

(calculated on a 365 day year basis), by (ii) the ~~Lessor's~~
Cost of all Equipment hereunder.

(b) Fixed Rental for the Group A Units shall be payable in two hundred forty (240) monthly installments, payable in advance on the first day of each month of each year through and including 2004, commencing with January 1, 1985. Fixed Rental for the Group B Units shall be payable in ninety-six (96) monthly installments, payable in advance on the first day of each month of each year through and including 1992, commencing with January 1, 1985. The base rental rate for use in calculating the monthly payments of Fixed Rental ("Base Rent") shall, subject to adjustment pursuant to Section 2.1(c), be equal to the following lease rate factors (the "Lease Rate Factors"): for the Group A Units, a Lease Rate Factor equal to 0.930967% of the Equipment Cost of the Group A Units subject to this Lease (which does not include Equipment Cost with respect to any Group A Units with respect to which this Lease has then previously been terminated by reason of a Casualty Occurrence or Early Termination with respect to such Unit as respectively provided in Section 10.6 and 17.5 hereof); and, for the Group B Units, a Lease Rate Factor equal to 1.33756% of the Equipment Cost of such Units (which does not include Equipment Cost with respect to any Group B Unit with respect to which this Lease has then previously been terminated by reason of a Casualty Occurrence or Early Termination with respect to such Unit as respectively provided in Sections 10.6 and 17.5 hereof).

Notwithstanding the foregoing and recognizing the facts recited in Section 2.1(c) and that the interest rate actually payable on the Notes prior to the Rent Adjustment Date is the Actual Rate, the Fixed Rental actually payable on the rent payment dates on or prior to the Rent Adjustment Date shall be net of the difference between interest which would be due on such Notes on each such date at the Assumed Rate and the interest in fact due on such Notes at the Actual Rate.

(c) The Lease Rate Factors set forth in Section 2.1(b) are based on an assumed debt rate of 13.625% (the Assumed Rate") and on the assumption that Transaction Expenses will not include any amount payable for counsel fees as described in the second sentence of the definition of Transaction Expenses in the Participation Agreement. The Assumed Rate will be changed effective on or before April 1, 1985, as provided in Section 2.4 of the Participation Agreement, to a final interest rate (or two interest rates, one with respect to debt relating to the Group A Units, as defined in Section 2.5, and one with respect to the Group B Units, as defined in Section 2.5) (the "Final Interest Rate(s)"), and such counsel fees will be payable. Provided that such counsel fees have been invoiced prior to the effective date of the Final Interest Rate(s) as set forth in the Participation Agreement (the "Rent Adjustment Date"), the Lessor, acting in good faith, shall recalculate the Lease Rate Factors set forth in Section 2.1(b), which recalculated Lease Rate Factors will be

the Lease Rate Factors effective as of the Rent Adjustment Date, in order to provide the Lessor with the same after-tax cash flows and after-tax yields ("Economic Return") as are reflected in the Lease Rate Factors set forth in Section 2.1(b) in light of the actual amount of counsel fees absorbed by Lessor and the Final Interest Rate; provided that the Lease Rate Factors as recalculated will in any event result in payment of Fixed Rentals sufficient to pay each installment of principal of, and interest at the Final Interest Rate(s) on, the Notes when due without acceleration. Except as provided above, such recalculation shall be based upon the same assumptions and methods of calculation utilized by Lessor in calculating the Lease Rate Factors set forth in Section 2.1(b). On or before the Rent Adjustment Date, the Lessor and Lessee will execute and deliver new Rental Schedules reflecting the recalculated Lease Rate Factors.

2.2. Rent Payment Dates. The "Basic Term Commencement Date" hereunder shall be January 1, 1985. The first installment of Fixed Rental with respect to the Units shall be payable on January 1, 1985 and further installments of Fixed Rental shall be payable monthly on the first day of each month thereafter with the final installment payable on December 1, 2004. If any rent payment date is not a Business Day, the rent payment otherwise payable on such date shall be payable on the next succeeding Business Day.

2.3. Place and Manner of Rent Payment. The payments of Rental and all other amounts payable hereunder by the Lessee shall be paid to the Lessor by wire transfer of Federal Funds to an account of the Lessor at such bank as the Lessor shall direct in writing; provided that until Lessee shall have received notice to the contrary from Note Purchaser, the Lessee shall make such payments to Note Purchaser by wire transfer and to such account as may be designated from time to time in writing delivered by the Note Purchaser to the Lessee.

2.4. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental, Interim Rental and Supplemental Rent and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of Rental, rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Note Purchaser or against any other Person whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason or any defect in or damage to or loss or destruction of the Units from whatsoever cause, the taking or requisitioning of the Units by condemnation or otherwise, the prohibition of Lessee's use of the Units, the interference with such use by any Person, the invalidity or unenforceability or lack of due authorization or

other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or the bankruptcy, reorganization or insolvency of Lessor or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rentals and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 10 hereof, or until, pursuant to Section 12 hereof, the Units have been returned to the possession of the Lessor (for all purposes of this Lease the Units shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of the Units except in accordance with the express terms hereof. Each Rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or Note Purchaser; provided, however, nothing contained in the Lease shall be construed as a waiver of the Lessee's right to seek, or its entitlement to, monetary damages or specific performance on account of any failure of the Lessor to perform its obligations under this Lease or on account of any act or the breach of any warranty or representation

of the Lessor so long as Lessee shall continue to make the payments of Rental and all other payments due hereunder and continue to perform its obligations under this Lease.

2.5. Term of Lease. The term of this Lease (the "Term") with respect to any Unit identified as a "Group A" Unit on SCHEDULE A hereto (the "Group A Units") shall begin upon execution by the Lessee of a Certificate of Acceptance and Rental Schedule identifying such Unit and, subject to the provisions of Sections 10, 13 and 17 hereof, shall terminate at midnight, December 31, 2004 (the "Group A Termination Date"), and with respect to any Unit identified as a "Group B" Unit on SCHEDULE A hereto (the "Group B Units") shall begin upon execution by the Lessee of a Certificate of Acceptance and Rental Schedule identifying such Unit and, subject to the provisions of Sections 10, 13 and 17 hereto, shall terminate at midnight, December 31, 1992 (the "Group B Termination Date"). With respect to any Unit, the "Lease Commencement Date" means the date of execution by the Lessee of a Certificate of Acceptance and Rental Schedule identifying such Unit, and the "Lease Term" means, for any Unit.

SECTION 3. OWNERSHIP AND MARKING OF UNITS.

3.1. Retention of Title. From and after the Lease Commencement Date for any Unit, the Lessor shall retain full legal title to such Unit notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

3.2. Identification. From and after the Lease Commencement Date for any Unit, the Lessee shall, at its own expense, cause such Unit to be legibly and permanently labeled by means of a plate or stencil in contrasting colors upon each side of such Unit of the Equipment in letters not less than one inch in height as follows:

"Leased from Heleasco Twenty-Three, Inc., as Owner, and Subject to a Security Interest."

Lessee shall make appropriate changes in such identification and additions thereto as from time to time may be requested in writing by Lessor or may be required by law in order to protect the title of the Lessor to the Units, its rights under this Lease, or the rights of Note Purchaser in this Lease or the Units. The Lessee will not place the Units in operation or exercise any control or dominion over the same after the date hereof until the required legend shall have been so marked on each side of the Units.

From and after the Lease Commencement Date for any Unit, the Lessee will cause such Unit to be kept numbered with the identifying number set forth in the Certificate of Acceptance (which in the case of Group A Equipment shall include road numbers for each Unit) for such Unit, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit, the rights of the Lessor under this Lease, or the rights of Note Purchaser in this Lease or the Units. The Lessee will not change or permit to be changed the road number of any Group A Unit unless

and until (i) a written statement of new number or number to be substituted therefor shall have been filed with the Lessor and the Note Purchaser and duly filed, recorded or deposited by the Lessee with the Interstate Commerce Commission and in all other offices where the Lease and the Security Agreement shall have been filed, and (ii) Lessee shall have furnished the Lessor and the Note Purchaser with an opinion of counsel to such effect and to the effect that no other filings are necessary in the United States to protect the Lessor's and Note Purchaser's rights in and to the Units.

3.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its Affiliates as defined in Section 16.2 hereof.

SECTION 4. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE UNITS, AS-IS, IN WHATEVER CONDITION THEY MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF THE UNITS, (B) THE LESSOR'S TITLE THERETO, (C) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, UNITS OR WORKMANSHIP IN, THE UNITS, OR (D) ANY OTHER MATTER WHATSOEVER, IT

BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR, OWNER AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Notwithstanding the foregoing, but subject always to Section 2.4 hereof, the Lessor warrants and represents to the Lessee that, so long as an Event of Default hereunder shall not have occurred and be continuing, the Lessee may and shall peaceably and quietly have, hold, possess, use and enjoy the Units as provided in this Lease without suit, molestation, or interruption by Lessor (or by any party claiming by, through or under Lessor) or by reason of Lessor's acts. The Lessee warrants and agrees to defend the right, title and interest of the Lessor to the Units against the rights or claims of any Person whatsoever, except such claims arising by, through or under Lessor which are not related to Lessor's ownership of the Units and the transactions contemplated hereby. Except with respect of the Lessor's warranty of quiet enjoyment set forth above and in the case of gross negligence or willful misconduct of the Lessor, the Lessor shall have no responsibility or liability to the Lessee or any other Person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of the Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Units.

SECTION 5. LESSEE'S INDEMNITIES.

5.1. General Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and the Note Purchaser and their respective successors and assigns (the "Indemnitees") from and against:

(a). any claim, cause of action, damages, liability, loss, cost or expense (including, without limitation, reasonable counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them relating to this Lease, the other Operative Agreements, the Coal Purchase Agreements or the Units or any part thereof, including without limitation, (i) the construction, purchase, delivery, acceptance, rejection, possession, ownership, sale, leasing, return or storage of the Units or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any Indemnatee), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or on behalf of the Lessor hereunder or under the other Operative Agreements to which it is a party, (iii) as a result of claims for patent, trademark or copyright infringements, (iv) as a result of claims for negligence or strict liability in tort, (v) the sale or other disposition of the Units after an Event of Default hereunder; and

(b) any net increase in any Indemnatee's federal, state or local income taxes resulting from the inclusion in

the net income of any Indemnatee of the amount required to be paid by Lessee to such Indemnatee pursuant to this Section 5.1.

The Lessee shall not be required to indemnify any Indemnatee against any loss, damage, injury, claim or demand which arises out of or consists of any of the following: (1) violation of banking, investment or securities laws, unless such violation is a result of a misrepresentation or an omission to state a material fact in its possession or breach of a warranty or agreement by the Lessee or an action or failure to act by Lessee; (2) any breach of or failure to perform any express duty, obligation or warranty made by such Indemnatee, unless such breach or failure to perform is a result of a misrepresentation, or an omission to state a material fact in its possession, breach of a warranty or agreement, or an action or failure to act by the Lessee; (3) any lien on the Units for the period during which the Lessee is contesting such lien as permitted by Section 8 hereof; (4) the gross negligence or willful misconduct of such Indemnatee, its agents or its employees; (5) Transaction Expenses; (6) claims resulting from or based upon the assertion that such Indemnatee was not entitled to enter into this Lease which may be raised by any shareholder or creditor of such Indemnatee; and (7) items for which such Indemnatee will be fully compensated by payment of the appropriate Casualty Value or Termination Value; provided that such payments are actually made by the Lessee. In the event that any Indemnatee shall not be entitled to indemnification by the Lessee for any of the reasons set forth in clauses (1) through (7)

above, the Lessee agrees that all other Indemnitees shall have the right to be fully indemnified by the Lessee regardless of the circumstances which relieve the Lessee of its obligations to indemnify any other Indemnatee, and the wrongful conduct of such Indemnatee shall not be imputed to any other Indemnatee. Each Indemnatee shall give the Lessee prompt written notice of any matter which may give rise to a claim or liability against such Indemnatee; provided, however, that the failure of such Indemnatee to give such notice shall not relieve the Lessee of any of its obligations hereunder. The Lessee shall, at its expense, resist, defend or settle any action, suit or proceeding in respect of which the Lessee would be required to indemnify hereunder, or cause the same to be resisted and defended, by counsel for the insurer of the liability or by counsel designated by the Lessee and approved by the Indemnatee, but if such Indemnatee shall desire to participate through its own counsel in the defense of any such action, suit or proceeding which the Lessee shall be so resisting and defending or shall be causing so to be resisted and defended it may do so at its own expense. Upon the payment in full of any indemnities pursuant to this Section 5.1 by the Lessee, the Lessee shall be subrogated to any right of the Indemnatee in respect of the matter against which indemnity shall have been given. The indemnities and assumptions of liabilities set forth in this Section 5.1 do not guarantee to any party at any time a residual value in the Units nor do they guarantee the payment of

the Notes or any interest or premium thereon. None of the indemnities of this Section shall be deemed to create any rights of subrogation in any insurer or third party against, from or under an Indemnitee whether because of any claim paid or defense provided for the benefit thereof or otherwise.

5.2. Special Tax Representations; Tax Indemnity.

(a) The Lessor will acquire its interest in the Equipment and has entered into this Lease on the basis that it will be entitled to take into account the following deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code") to an owner (commencing in Lessor's taxable year ending December 31, 1984) of property (collectively, the "Tax Benefits"): (1) the investment credit pursuant to Section 38 and related sections of the Code, in an amount equal to ten percent (10%) of the Equipment Cost of the Units excluding locomotives, (any investment tax credit available with respect to the locomotives will be for the account of Lessee) (the "Investment Credit"); (2) accelerated cost recovery deductions under Section 168(a) of the Code in an amount determined by multiplying 95% of the Equipment Cost of the Units (100% thereof in the case of the three General Motors SD 40-2 Diesel Locomotives identified in SCHEDULE A hereto, which are hereinafter referred to as the "Locomotives") by the percentage applicable under Section 168(b)(1) of the Code to "5-year property," within the meaning of Section 168(c)(2)(B) of the Code (the "Recovery

Deduction"); and (3) the deduction by Lessor under Section 163 of the Code (the "Interest Deduction") of the full amount of any interest paid or accrued by Lessor, in accordance with the Code and Regulations relating thereto, with respect to the Notes issued to the Note Purchaser pursuant to the Security Agreement.

(b) This Lease has also been entered into on the basis of the following special representations and warranties of the Lessee (the "Special Representations"): (i) on the Lease Commencement Date for each Unit (other than the Locomotives) such Unit will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code, and at the time Lessor becomes the owner of such Units, they will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) of the Code from commencing with Lessor; (ii) the Units are "5-year property" (within the meaning of Section 168(c)(2)(B) of the Code) and eligible for Recovery Deductions in respect of 100% of the Equipment Cost of the Locomotives and 95% of the Equipment Cost of all of the other Units in the percentages set forth in Section 168(b)(1) of the Code and Lessee will not at any time during the Lease Term use or fail to use the Units in such a way as to disqualify the Units for Recovery Deductions set forth in Section 168(b)(1) of the Code; (iii) Lessee will not at any time during the Lease Term use or fail to use the Units in such a way as to disqualify them as "section 38 property"

within the meaning of Section 48(a) of the Code; (iv) for Federal Income tax purposes, all amounts includable in the gross income of Lessor with respect to the Units and all deductions allowable to Lessor with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (v) Lessee will maintain sufficient records to verify the assumptions specified in subsections (i) through (iv) of this Section 5.2(b). which records will be furnished to Lessor within 30 days after receipt of a written demand therefor; (vi) an amount equal to at least twenty percent (20%) of the Equipment Cost of the Units is a reasonable current estimate of what the Fair Market Value of such Units, determined without regard to inflation or deflation, will be on the expiration of the Lease Term with respect to such Units (without regard to Section 18 hereof), and at least twenty percent (20%) of the originally estimated useful life of the Units is a reasonable current estimate of what the remaining useful life of such Units will be on the expiration of the Lease Term with respect thereto (without regard to Section 18 hereof); (vii) none of the Equipment (other than the Locomotives) was placed in service by Lessee more than three months prior to the Lease Commencement Date for such Equipment; (viii) Lessee has not taken any accelerated cost recovery system deductions as provided in Section 168(b)(1) of the Code with respect to the Equipment; (ix) on the Lease Commencement Date for the Locomotives, Lessor's tax basis in the Locomotives will be equal to the current

fair market value of the Locomotives, which will be equal to the total consideration paid by Lessee; (x) the Lessee is not a tax exempt cooperative under Section 521 of the Code; (xi) no improvement or addition will be made to any Unit that would require the Lessor to report taxable income; (xxii) none of the Units constitute limited use property within the meaning of Rev. Proc. 76-30; and (xiii) neither the existence or the operation of the renewal option contained in Section 17.2(b)

hereof will result in a loss of the Lessor's Tax Benefits.

(c) If, by reason of (i) the inaccuracy of any of the Special Representations set forth in paragraph (b) of this Section, or (ii) the act (other than Lessee's obligations pursuant to Section 2.2 of the Participation Agreement) or failure to act by Lessee or any other person that uses or is in possession of the Units, Lessor shall lose, shall not have or shall lose the right to claim or there shall be disallowed, deferred or recaptured with respect to Lessor, all or any portion of the Tax Benefits with respect to any of the Units (any such loss, disallowance, recapture, unavailability or recognition hereinafter being referred to as a "Loss of Benefits"), then, at Lessee's option either Lessee shall become obligated to make monthly payments (the "Tax Indemnity Monthly Payment") in an amount which, when added to monthly Fixed Rental, shall be sufficient to maintain Lessor's projected after-tax cash flows and after-tax yield ~~on investment~~ over the Lease Term for such Units (the "Yield") in light of such Loss of Benefits, or: (i) Lessee shall on the

next Rent Payment Date (as provided in Section 2.3) occurring after Lessor has notified Lessee of such Loss of Benefits, pay Lessor a lump-sum amount which in the reasonable opinion of Lessor will cause Lessor's actual after-tax cash flows and after tax yield ~~on investment~~ with respect to such Units over the applicable Lease Term to equal the Yield; and (2) Lessee shall pay to Lessor upon being notified thereof an amount equal to any interest and penalties which may be assessed against Lessor with respect to any such Loss of Benefits. If a Loss of Tax Benefits results in a subsequent reduction of Lessor's tax liability not contemplated in Section 5.2(a) hereof, such subsequent reduction in Lessor's tax liability shall be taken into consideration in calculation of the Lessee's tax indemnification obligation hereunder.

Upon request by Lessor, Lessee agrees to execute a supplement to this Tax Indemnity acknowledging its obligation to make Tax Indemnity Monthly Payments.

In calculating the amount of any payment to be made hereunder, Lessor and Lessee agree that calculation of any payment under this section with respect to federal taxes will be based on an assumed federal tax rate of forty-six percent (46%), regardless of the actual tax rate. A Loss of Benefit shall be determined to have occurred upon the earliest to occur of: (A) the issuance of a written opinion by independent tax counsel mutually selected by Lessor and Lessee that there is no reasonable basis for claiming the Tax Benefit that is the subject of the Loss of Benefits; or

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(B) subject to the Lessee's rights under Section 5.2(e), ~~an~~
~~reasonable and good faith~~ agreement with the taxing authority
is made by Lessor with respect to a Loss of Benefits; (c) sub-
ject to Lessee's rights under Section 5.2(e), payments by
Lessor of taxes, interest or penalties with respect to a
Loss of Benefits; or (D) subject to the Lessee's rights under
Section 5.2(e), any court decision (including a decision of
the Tax Court of the United States) which is not appealed
with respect to a Loss of Benefits.

D
(d) Notwithstanding the above, Lessee shall not be
required to pay Lessor the amount or amounts provided for in
Section 5.2(c) if the requirement for payment shall arise
solely as the result of any one or more of the following
events:

(i) Lessor, or a member of an affiliated group of
which it is a member, without the written consent of
Lessee, shall fail to claim or cause to be claimed in a
timely manner (including making all appropriate
permissible elections) such Tax Benefits in its federal
income tax returns for the appropriate years or shall
fail to follow the proper procedures in claiming such
Tax Benefits;

(ii) Lessor, or the affiliated group of which it
is a member shall not have sufficient income or tax
liability to benefit from such Tax Benefits;

(iii) Lessor shall transfer all or any portion of
its beneficial interest in the Units or Lessor shall

transfer all or any portion of its title to the Units (other than a transfer occurring at any time on or after an Event of Default shall have occurred);

(iv) A Casualty Occurrence shall have occurred and Lessee shall have paid Lessor the Casualty Value of the Units or Lessee shall have paid Lessor the Termination Value of the Units pursuant to Section 17.5);

(v) Lessor's failure to meet the minimum unconditional "at risk" requirement of Section 4(1) of Rev. Proc. 75-21;

(vi) Failure of Lessor to meet and maintain the initial and continuing "Minimum Investment" requirement of Sections 4(1)(A) and (B) of Rev. Proc. 75-21;

(vii) Any election made by Lessor pursuant to Section 48(q)(4) of the Code;

-- (viii) With respect to a Loss of Benefits relating to any Unit, a change in tax law occurring after the Lease Commencement Date for that Unit; and

(ix) Failure of Lessor to fulfill its contest obligations under Section 5.2(e).

(e) If the Internal Revenue Service shall claim an adjustment in the federal income taxes of Lessor which would result in a Loss of Benefits, Lessor shall promptly notify Lessee, and Lessor agrees to contest such claim, subject to the following conditions: ~~however, that~~ (i) within thirty (30) days after receipt by Lessee of notice of such claim, Lessee shall request that such claim be contested; (ii) Lessor, at

its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Claims Court, as Lessor shall elect, or contest such claim in the Tax Court of the United States considering, however, in good faith such request as Lessee shall make concerning the most appropriate form in which to proceed; (iii) prior to taking such action, Lessee shall have furnished Lessor with an opinion of tax counsel reasonably acceptable to Lessor to the effect that there is a reasonable basis in fact or law for contesting such claim; (iv) Lessor shall have no obligation to appeal an adverse determination of the United States Tax Court, United States District Court or the United States Court of Claims, to a United States Court of Appeals unless Lessor shall have received from the Lessee an opinion of independent tax counsel selected by Lessor to the effect that there is a reasonable likelihood of success, and in no event shall Lessor have any obligation to appeal an adverse determination of a United States Court of Appeals to the United States Supreme Court; (v) there shall have occurred no Event of Default under Section 13.1(a) hereof or any other Event of Default for which Note Purchases shall have commenced the exercise of any remedy; and (vi) Lessee shall have acknowledged that it will be liable to Lessor for an indemnity hereunder in the event the claim is

successfully asserted by the Internal Revenue Service on the asserted basis which gave rise to the Lessee's obligation to make an indemnity payment under this Section 5.2 and Lessee shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such claim including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements, and (B) the amount of any interest or penalty which may ultimately be payable as a result of contesting such claim, and (C) if Lessor determined in its sole discretion to contest the disallowance of Tax Benefits by proceeding for refund of amounts paid based on the disallowance, Lessee shall have loaned to Lessor on an interest-free basis an amount equal to the amount paid by Lessor with respect to a Loss of Tax Benefits. Upon a Final Determination, Lessee shall become obligated for the payment of any indemnification due under Section 5.2(c), subject to the limitations in Section 5.2(d), resulting from the outcome of such contest, and, in the event that the amount of the proposed disallowance of Tax Benefits had been paid by Lessee, and was refunded, Lessor shall become obligated to pay Lessee any refund received together with any interest received thereon.

Upon the occurrence of a Loss of Benefits with respect to which an indemnity payment is required by Section 5.2(c) and such payment has been made, Casualty Values and Termination Values shall be reduced to reflect the occurrence and payment of such Loss of Benefits.

(f) In the event that Lessor shall obtain a refund of any additional federal income tax paid by Lessor, other than a refund received pursuant to Section 5.2(e) in respect of a Loss of Benefits, Lessor shall pay Lessee the amount of such refund (reduced by any costs or expenses incurred by Lessor in obtaining such refund) together with any interest received by Lessor thereon and to the extent any payment to Lessor was increased to reflect Lessor's obligations to pay taxes thereon pursuant to the last sentence of the first paragraph of Section 5.2(c), together with any additional tax savings resulting from any payment under this Section, provided such amount shall in no event exceed the amount of the tax indemnity payment paid by Lessee to Lessor. Any payments required under this paragraph shall be paid to Lessee by Lessor promptly upon the receipt by Lessor of any such refund.

(g) The determination of any amount payable to or by Lessor under this Section 5.2 shall be made by Lessor, and, if requested by Lessee, such determination shall be verified, at Lessee's expense, by a firm of independent public accountants of recognized national standing selected by Lessee and reasonably acceptable to Lessor.

5.3. Definition of "Supplemental Rent"; Premium; Continuation of Indemnities and Assumptions. For purposes of this Lease, all payments required to be made by Lessee hereunder (except payments of Interim Rental and Fixed Rental pursuant to Section 2.1) including, without limitation, payments made pursuant to

this Section 5, Section 9, Section 20.2 and interest thereon pursuant to Section 18 shall be defined to constitute "Supplemental Rent". In addition to the foregoing, the term Supplemental Rent shall include an amount equal to the amount of any premium with respect to repayment or prepayment of any or all of the Notes or otherwise which Lessor may from time to time be required to pay to the Note Purchaser or its successors or assigns pursuant to the Security Agreement or such Notes. Lessee agrees to pay said amount on or before the date the premium by which the amount due hereunder is calculated shall be due from Lessor to the Note Purchaser pursuant to the Security Agreement or the applicable Note. The Lessor shall have all rights and remedies pursuant to this Lease or under applicable law in the event of nonpayment of Supplemental Rent as it has in the event of nonpayment of Fixed Rental. The indemnities, assumptions of liability and other obligations contained in this Section 5 shall continue in full force and effect notwithstanding the termination of this Lease with respect to any Unit, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in clauses (i), (ii) or (iv) of subsection (a) or subsection (b) of Section 5.1 hereof, occurring with respect to any Unit after the termination of this Lease for such Unit, except for any such matters occurring after such termination arising in connection with the Lessee's assembling, delivering, storing or transporting of any Unit as provided in Section 12 or 14, as the case may be, and for matters where claims

are made after termination of this Lease for such Unit which relate to events occurring prior to such termination.

SECTION 6. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all applicable governmental laws, regulations, requirements and rules with respect to the Units and the use and maintenance of the Units subject to this Lease. In case the Units are required to be altered, replaced or modified in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, replacements and/or modifications at its own expense and title thereto shall be immediately vested, free of all liens (except liens permitted, and then only during the period permitted, by this Lease or the Security Agreement) in the Lessor and shall be deemed accessions to the Units and part of the Units for all purposes hereof. The Lessee shall not use or permit the Units to be used in an improper or unsafe manner or in violation of any federal, state or local law, statute, ordinance, rule or regulation. Notwithstanding the above, Lessee may, in good faith and at its expense, contest the validity or application of any such law or rule in any manner which does not, in the reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor or the Note Purchaser in the Units or this Lease.

SECTION 7. MAINTENANCE, USE AND IMPROVEMENT OF UNITS.

(a) Lessee will maintain the Units of Equipment to the same extent as a prudent individual would in the management

of its own properties for the full useful life of a similar item as if owned by Lessee and without reference to the remaining Lease Term for such Units, and in all events to the extent required to maintain such an item in good repair, ordinary wear and tear excepted, working order and operating condition as when delivered to Lessor. In addition, Lessee shall maintain each Unit of Equipment in such condition as will enable such Unit to perform the functions for which it was originally intended at its original rated capacity as described by the Manufacturer thereof and shall maintain each Unit of Equipment in accordance with the specifications and planned maintenance program of the Manufacturer thereof and in accordance with the standards prescribed by any governmental authority having jurisdiction over such Unit (including, with respect to the Group A Units, the American Association of Railroads), and without limiting the foregoing, according to those standards applied by Lessee to equipment owned by it. Without limitation to any other provision of this Section 7(a), each Unit of Equipment subject hereto shall be operated safely and carefully by properly trained persons and shall not be operated or used in a negligent, reckless, careless or abusive manner, loaded beyond its maximum gross weight, load or axle limits, used beyond established time restrictions or without adequate oil pressure, coolant levels, fluid levels, sealant or hoses and belts. Lessee shall prepare and maintain a repair and service log for the Equipment reflecting all maintenance,

and shall make the log available to Lessor and Note Purchaser for reasonable inspection and shall deliver copies of the log to Lessor together with surrender of the Equipment.

(b) Except as required by the provisions of Section 6 hereof, the Lessee shall not modify the Units without the prior written authority and approval of the Lessor, which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon the Units pursuant to Section 6 hereof or pursuant to its obligation to maintain and keep the Units in good order, condition and repair under this Section 7 shall be free of all liens (except liens permitted, and then only during the period permitted, by this Lease or the Security Agreement) and considered accessions to the Units and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to the Units unless the same are readily removable without causing damage to the Units. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to the Units, the Lessee agrees that it will, prior to the time the Lessor shall be entitled to possession of the Units in accordance with the terms hereof remove the same at its own expense without causing damage to the Units. Lessee may, in its sole discretion, offer the

Lessor the opportunity to purchase such additions or improvements and Lessor, in its sole discretion, may elect to purchase such additions or improvements and lease the same to Lessee for rentals at a mutually agreed upon rate. In the event Lessee desires to make alterations or improvements at its own expense, they shall be subject to the restrictions of Rev. Proc. 75-21 or 79-48, or any amendment or superseding law or administrative guidance.

SECTION 8. LIENS ON THE UNITS.

The Lessee shall promptly pay or satisfy and discharge any and all claims which, if unpaid, would constitute or become a lien or a charge upon the Units, and any liens or charges which may be levied against or imposed upon the Units, other than those arising by, through or under the Lessor or the Note Purchaser, or any of their successors or assigns, and not subject to Lessee's indemnification hereunder. However, the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the Note Purchaser in this Lease or the Units, and the Lessee provides the Lessor with written notice of the lien or charge being contested and the basis of such contest. The Lessee's obligations under this Section 8 with respect to any Unit shall survive the termination of this Lease for such Unit, with respect to any claims, lien or charge relating to such Unit arising prior to

such termination or from action, inaction or events relating to such Unit taking place prior to such termination.

SECTION 9. FILING; PAYMENT OF STATE AND LOCAL TAXES.

9.1. Filing. The Lessee will cause all filings to be made under the Interstate Commerce Act, the Uniform Commercial Codes and other relevant laws of the State of Delaware, the District of Columbia and elsewhere as appropriate and will cause the filing of such other documents as the Lessor or the Note Purchaser may reasonably request to protect their interests in this Lease, the Units and the other collateral described or referred to in Section 15 (collectively the "Collateral") and will furnish the Lessor and the Note Purchaser proof thereof. The Lessee will, at Lessee's expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Note Purchaser, for the purpose of protecting the Lessor's title to or the Note Purchaser's security interest in this Lease, the Units and the other Collateral to the satisfaction of the Lessor's or Note Purchaser's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and Note Purchaser proof of such filings and an opinion of counsel reasonably satisfactory to the Lessor and the Note Purchaser that such action has been properly taken and has had the effects contemplated by the Operative Agreements. The Lessee will pay all

costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments, or incident to the taking of such action, including any opinion of counsel required pursuant to this Section 9.1.

9.2. Payment of Taxes. Lessee agrees to pay promptly when due, and to indemnify, and hold Lessor and Note Purchaser harmless from, all license, title and registration fees whatsoever, all levies, imposts, duties, charges or withholdings whatsoever, and all sales, use, personal property, franchise (howsoever calculated), stamp and other taxes whatsoever (together with any penalties, fines or interest thereon) whether assessed, levied or imposed by any governmental or taxing authority against or upon Lessor or Note Purchaser or otherwise, with respect to any Unit of Equipment or the purchase, acquisition, ownership, delivery, leasing, possession, use, operation, control, return or other disposition thereof, or the rents, receipts or earnings arising therefrom, or with respect to this Lease, excluding, however, (i) any such taxes or charges to the extent they are included in the Equipment Cost, (ii) any federal taxes levied on Lessor's or Note Purchaser's net income, as net income is presently determined under the Code, or (iii) state or local taxes levied on Lessor's or Note Purchaser's net income (provided, however, that this exclusion shall not extend to any state or local taxes levied on Lessor's or Note Purchaser's net income by any jurisdiction into which any Unit is moved from the location originally specified in the Rental Schedule therefore, but only to the extent that such taxes exceed the taxes

to which Lessor or Note Purchaser was exposed in the jurisdiction
of (original location). In the event any such fees, levies,
imposts, duties, charges or taxes are paid by Lessor or Note
Purchaser, or if any such shall be required to collect or pay any
thereof, Lessee shall reimburse Lessor or Note Purchaser, therefor
(plus any penalties, fines or interest thereon) promptly upon
demand. Until Lessor notifies Lessee in writing to the contrary,
Lessee will promptly before any penalty attaches prepare and file
in Lessor's name all personal property tax returns covering the
Equipment and Lessee will pay the personal property taxes levied
or assessed thereon directly to the levying authority. If Lessor
by writing notifies Lessee that Lessor shall prepare and/or file
any such return, Lessee will, promptly upon being invoiced by
Lessor and/or Note Purchaser, reimburse Lessor and/or Note Purchaser
for the full amount of such personal property taxes so paid by
Lessor and/or Note Purchaser. All of the obligations of Lessee
under this Section with respect to any fees, levies, imposts,
duties, charges, withholdings and taxes (plus any penalties, fines
or interest thereon and, in the event that any of the foregoing
are deemed to be income to Lessor, any attendant income tax)
assessed, levied, imposed or acquired prior to the expiration or
other termination of this Lease or the Lease Term with respect to
any Unit, shall continue in full force and effect notwithstanding
such expiration or other termination and are expressly made for
the benefit of, and shall be enforceable by, Lessor. Lessee may
contest the applicability of any fees or taxes covered by its
indemnification under this Section provided that it does so in

good faith and provided further than no Unit of Equipment will be thereby subject to the lien of any taxing authority. Lessor will cooperate as reasonably requested by Lessee in any such contest provided that Lessee shall be responsible for all out-of-pocket expenses and Lessee shall have delivered to Lessor the opinion of independent-tax counsel to the effect that the position adopted by Lessee is reasonably meritorious. Lessee will give Lessor and Note Purchaser notice of any contest relating to a material liability covered by this indemnification. Lessee will provide Lessor a copy of all property and other tax returns filed hereunder by Lessee in Lessor's name. Lessee may negotiate agreements for the abatement, relief or other adjustment of the taxes covered hereby and shall upon request provide a copy thereof to Lessor and Note Purchaser.

SECTION 10. INSURANCE: PAYMENT FOR CASUALTY OCCURRENCE.

10.1. Insurance. The Lessee will at all times after the Lease Commencement Date for any Unit, at its own expense, keep or cause to be kept such Unit insured against loss on an "all risk" basis in an amount which shall be customary for companies owning property of a character similar to the Units and engaged in a business similar to that engaged in by the Lessee and in any event not less than an amount equal to the Casualty Value for the Units. Such "all risk" insurance may be subject to deductible provisions in such amounts and to the extent that such deductibles are consistent with prudent industry practice, but in any event with no greater deductible and in at least comparable

amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units; provided, however, that it is expressly understood and agreed that any loss, cost or expense arising out of use of deductible provisions shall be exclusively the cost and expense of the Lessee; and that in no event shall be deductible amount for such insurance policies exceed \$25,000.00 per occurrence. The Lessee shall also maintain general public liability insurance with respect to the Units against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$20,000,000.00 per occurrence combined single limit or such greater amount as the Lessor shall reasonably require and as shall be consistent with industry practice, subject to deductible or self-insurance provisions in such amounts as are consistent with prudent industry practice, but in any event with no greater deductible and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units; provided, however, that it is expressly understood and agreed that any loss, cost or expense arising out of use of deductible provisions shall be exclusively the cost and expense of the Lessee; and that in no event shall the deductible amount for such insurance policies exceed \$25,000.00 per occurrence. The Lessee shall furnish the Lessor and Note Purchaser with certificates of independent insurance brokers or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or

policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All such policies shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each assured named therein.

If no Event of Default shall have occurred and be continuing, the proceeds of any insurance paid in accordance with the terms hereof on account of or for any loss or casualty in respect of the Units shall be applied as follows: (i) if the Units have been repaired, restored or replaced, such proceeds shall be paid to the Lessee upon a written application signed by an authorized officer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing, restoring or replacing the Units so long as the restoration, replacement and repair parts become immediately subject to all of the terms and conditions of this Lease and all public filing, recording and registrations necessary or expedient to vest title thereto in the Lessor and to perfect the security interest of the Note Purchaser are accomplished by the Lessee at its expense (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair, restoration or replacement and of such filings, recordings and registrations), or (ii) if this Lease is terminated with respect to such Units as a result of a Casualty Occurrence, such proceeds shall be applied in accordance with Section 10.5 (to the extent necessary to pay any unpaid portion of the Casualty Value) and, if no Event of Default has occurred and is continuing, all excess insurance proceeds shall be paid to Lessee. If Lessee

is at the time of the application of proceeds from insurance in default in the payment of any other liability hereunder and such default is continuing such proceeds shall be applied against such liability.

10.2. Endorsements. Any insurance carried in accordance with Section 10.1 hereof shall be endorsed to provide that:

(a) the Lessor, as owner of the Units, and the Note Purchaser, as secured party, are included as additional named insureds on all policies of liability insurance, with the understanding that any obligation imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of the Lessee and not that of any other insured;

(b) the policies with respect to damage or destruction to the Units shall be payable to the Lessor (except as provided below), provided, however, that until the Note Purchaser shall have notified the Lessee to the contrary the policies of insurance on the Units shall provide that the casualty losses in respect thereof, if any, shall be payable to the Note Purchaser (except as provided below) under a standard mortgagee loss payable clause satisfactory to the Lessor and the Note Purchaser and that such losses shall be adjusted and paid as provided in this Lease;

(c) the insurer thereunder waives all rights of subrogation against the Lessor and the Note Purchaser and waives any right of set-off and counterclaim and any other right of deduction, whether by attachment or otherwise;

(d) such insurance shall be primary without right of contribution from any other insurance carried by or on behalf of the Lessor or the Note Purchaser with respect to its interest in the Units;

(e) if such insurance is cancelled for any reason whatsoever, including nonpayment of premium, or any substantial change is made in the coverage thereunder, such cancellation or change shall not be effective as to the Lessor and the Note Purchaser until 30 days after receipt by both the Lessor and the Note Purchaser of written notice from such insurer of such cancellation or change, sent by registered mail; and

(f) inasmuch as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

Any insurance carried in accordance with Section 10 hereof shall be immediately endorsed to provide that the respective interests of the Lessor and the Note Purchaser shall not be invalidated by any action or inaction of the Lessee or any other Person, and that such insurance shall insure the Lessor and the Note Purchaser regardless of any breach or violation by the Lessee or any other Person of any warranties, declarations or conditions contained in the policies relating to such insurance, in the event that the Lessee agrees to provide a similar

endorsement to its insurance in connection with any other transaction.

10.3. Adjustment of Losses. The loss, if any, under any property damage insurance required to be carried by Section 10.1 hereof shall be adjusted with the insurer or otherwise collected, including the filing of proceedings deemed advisable by the Lessee, subject to the approval of the Lessor (unless the loss is less than \$25,000.00). The loss so adjusted shall be paid to the Lessor (or the Note Purchaser pursuant to the Loss Payable clause) for application pursuant to Section 4.1(c) of the Security Agreement, unless the amount in question is \$25,000.00 or less, in which case, provided that no Event of Default shall have occurred and be continuing, such amount shall be paid to the Lessee.

10.4. Duty of Lessee to Notify Lessor. In the event that any Unit shall be or become lost, stolen, destroyed, or, in the reasonable judgment of Lessee, as evidenced by a certificate of an officer of Lessee, ~~irreparably~~ irreparably damaged, or is damaged to the point where the repair of the Unit is impracticable or uneconomic (without reference to the remaining Lease Term for such Unit), during the Lease Term for such Unit or thereafter while such Unit is in the possession of the Lessee pursuant to Section 12 hereof, or shall be requisitioned, condemned or taken over by any governmental authority under the power of eminent domain or otherwise during the Lease Term for an indefinite period which in fact extends for more than 180 days and at the end of such period remains for an indefinite period or for a stated period which

exceeds the then remaining Lease Term (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly (but in no event later than 30 days thereafter) and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Note Purchaser in regard thereto and shall, at Lessee's option, either (a) pay the Casualty Value (as defined in Section 10.8 hereof) of the Unit in accordance with the terms of Section 10.5 hereof, or (b) replace the Unit, or notify Lessor and Note Purchaser of its intention to replace the same within sixty (60) days of such notice, with like property in good repair, condition and working order, free and clear of all liens, claims, security interests or encumbrances, other than the lien of Note Purchaser, which property shall thereupon become subject to this Lease, and Lessee shall indemnify and hold Lessor harmless (through an adjustment to the rental rate as provided in Section 5.2 hereof) against any reduction in Lessor's net return over the term of this Lease to the extent of any net additional income tax payable by Lessor as a result of any depreciation or investment tax credit recapture caused by replacing the Unit pursuant to this Section.

If Lessee has elected to replace such Unit but fails to make such replacement within the sixty (60) day period referred to above, Lessee shall, on the first day of the month following the month in which such sixty (60) day period ends, pay Lessor the amounts specified in Section 10.5 and undertake to sell such damaged Unit as provided in Section 10.7. If no Event of Default has occurred and is continuing, Lessor shall release to Lessee any

proceeds of insurance or other proceeds (e.g. proceeds of condemnation or requisition) received by Lessor with respect to any Unit replaced by Lessee upon receipt by Lessor of evidence satisfactory to it that such replacement has been made, or if the Unit to be replaced by Lessee has a material replacement cost, Lessor shall release such amounts in progress payments upon reasonable certification of the work for which Lessee requests payment.

If Lessee does not replace such damaged Unit, any insurance proceeds or other proceeds (e.g. proceeds of condemnation or requisition) received as the result of a Casualty Occurrence with respect to any Unit shall be applied first in reduction of any then unpaid obligations of Lessee to Lessor hereunder and secondly in reduction of Lessee's obligation to pay the Casualty Value for such Unit, if not already paid by Lessee to Lessor, or, if already paid by Lessee, and if no event of Default shall have occurred and be continuing, to the reimbursement of Lessee for its payment of such Casualty Value and the balance of such proceeds, if any, shall be paid to ~~Lessee~~ Lessor, unless and to the extent that such excess insurance proceeds represent insurance maintained by Lessee on its leasehold estate in excess of Casualty Value.

10.5 Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Unit, shall pay in accordance with the terms hereof a sum equal to the Casualty Value (as defined in Section 10.8) of the Unit as of the date of such payment plus any rentals or other sums, including Supplemental

Rent, due hereunder on or prior to such date then remaining unpaid.

10.6. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 10.5 hereof in respect of the Unit suffering a Casualty Occurrence, the obligation to pay rent for such Unit accruing subsequent to the payment of the Casualty Value shall terminate as described in Section 2.1 hereof.

10.7. Disposition of Units. In the event of a Casualty Occurrence with respect to any of the Units, Lessee shall dispose of such Units, on behalf of the Lessor, as soon as it is able to do so and for the best price obtainable. Any such disposition of the affected Units shall be on an "as is-where is" basis and without recourse or warranty except for liens created by, through or under Lessor. As to each separate Unit so disposed of, the Lessee shall retain from the proceeds of such disposition an amount equal to its reasonable costs and expenses of disposition attributable thereto, and remit the balance of such proceeds to the Lessor.

10.8. Casualty Value. The "Casualty Value" of the Unit suffering a Casualty Occurrence shall be an amount, determined as of the date the Casualty Value is paid as provided in this Section 10, equal to ^(a) that percentage of the Equipment Cost of such Unit set forth in the Schedule of Casualty Values attached hereto as SCHEDULE D opposite such date of payment plus ^(b) applicable prepayment premium.

and the Lessee shall not dispose of the affected Units to the Lessee or any Affiliate
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or, as ~~provided~~ otherwise provided in the applicable Rental Schedule,

10.9. Risk of Loss. The Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any Casualty Occurrence to a Unit from and after the date hereof and continuing until payment of the Casualty Value and all Rental installments and other sums due hereunder on or prior to the date of payment of such Casualty Value in respect of the Units has been made, and until such Unit or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of the Unit or the salvage thereof.

10.10. Awards. If any requisition, condemnation or taking does not constitute a Casualty Occurrence, so long as no Event of Default shall have occurred and be continuing, the proceeds of such requisition, condemnation or taking shall be paid to the Lessee. If Lessee is at the time of the application of such proceeds, payments and awards in default in the payment of any other liability hereunder and such default is continuing, such proceeds shall be applied against such liability.

SECTION 11. ANNUAL REPORTS

11.1. Duty of Lessee to Furnish. Lessee agrees to provide the reports and certificates required by it pursuant to Section 5 and 6 of the Participation Agreement. In addition, on or before May 1, 1986 and each succeeding May 1 during the Lease Term, the Lessee will furnish or cause to be furnished to the Lessor and the Note Purchaser an accurate statement, as of the date of such statement showing the condition or repair of the Units, and (b)

stating that the markings required by Section 3.2 hereof have been preserved or replaced.

11.2. Lessor's Inspection Rights. The Lessor and the Note Purchaser each shall have the right during normal business hours and upon reasonable notice at their respective sole cost and expense by their respective authorized representative, to inspect the Units and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Units during the continuance of this Lease.

11.3. License to Enter. Subject to the proviso hereto, Lessee hereby grants to the Lessor and the Note Purchaser (or such person as the Lessor or the Note Purchaser shall designate) an irrevocable license (Lessee hereby warranting that such license is valid and enforceable) to enter any property owned or controlled by Lessee where a Unit is located (and to use its best efforts to obtain upon request by the Lessor or the Note Purchaser the right to enter any property not owned or controlled by Lessee) and to bring upon or across such land such trucks, cranes and other equipment-handling device as such parties may deem necessary in connection with the exercise of Lessor's rights and remedies under this Lease; provided, however, that neither Lessor nor the Note Purchaser shall be entitled to exercise such license unless an Event of Default has occurred and is continuing and this Lease or Lessee's rights of possession hereunder have been terminated or the Lease Term has expired and Lessee has

failed or refused for any reason to surrender the Units pursuant to Section 12 or 14 hereof.

SECTION 12. RETURN OF UNITS UPON EXPIRATION OF TERM.

12.1. Return. Upon the expiration of the Lease Term with respect to any Units, the Lessee will (unless the Lessee has purchased such Units), at its own cost and expense, at the request of the Lessor, either: deliver possession of such Units to the Lessor at such storage areas of the Lessee or to any other reasonable locations within a 150-mile radius of the city of Denver, Colorado, or to such other locations as Lessor may specify which requires Lessee to transport such Units a distance no farther than the distance from their then current locations to the City of Denver, Colorado, or to such other locations as may be agreed by Lessee and Lessor; or in the absence of any designation of storage locations, in such location as the Lessee may select, and (in the event of storage at Lessee's facilities) permit the Lessor to store the Units at such facilities for a period not exceeding 60 days. At the end of such storage period or prior thereto at the request of the Lessor, the Lessee shall ready the Units for shipment. The costs of all such storage and shipping of the Units is to be at the risk and expense of the Lessee, and after expiration of such 60-day period or delivery of the Units to the site specified by Lessor, whichever occurs first, such risk and expense shall be for the account of the Lessor, including any reasonable charges for storage by the Lessee. In no event, however, shall Lessee be required to store the Units for a further period greater

than 90 days. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Units, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The gathering, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so gather, deliver, store and transport the Units. In the event any of the Units are not gathered, delivered and stored as hereinabove provided within 5 days after the expiration of this Lease with respect to such Units, the storage period shall not commence until such has been accomplished and the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the higher of (a) an amount equal to the Equipment Cost of such Units multiplied by the daily equivalent of the Fixed Rental rate applicable to such Units, or (b) the Fair Rental Value (determined in the manner provided in Section 17 hereof). ~~Units for each such day, exceeds~~
~~the amount, if any.~~

12.2. Condition on Return. The Units returned to the Lessor pursuant to this Section 12 shall be (i) in good working

and in the
condition

condition and (in the case of the Group A Units) eligible for interchange; (ii) the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, ~~and~~ specified further in Section 7; and (iii) free and clear of all liens and encumbrances. At the time of return of the Units to the Lessor, the Lessee shall also deliver to the Lessor all plans, specifications, operating manuals and other literature in its possession applicable to the Units.

SECTION 13. DEFAULT.

13.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Lessee shall fail to pay any part of any Fixed Rental, Interim Rental or Supplemental Rent, including, without limitation, Casualty Value or Termination Value as provided in Section 2, 10 or 17 hereof, and such failure shall continue for five (5) Business Days;

(b) Lessee shall fail to pay any sum required to be paid to the Lessor to compensate the Lessor for a Loss of Benefits pursuant to Section 5.2 hereof, and such failure shall continue for thirty (30) days after written notice from the Lessor to the Lessee, specifying the default and demanding the same be remedied;

(c) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Units, or any portion thereof not permitted by Section 16 of this

Lease, or Lessee shall permit the lapse of any insurance required to be maintained pursuant to Section 10.1;

(d) Lessee shall fail to observe or perform any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or any other Operative Agreement to which Lessee is party and such default shall continue for thirty (30) days after written notice thereof from the Lessor specifying the default and demanding the same be remedied; provided that the above thirty (30) day cure period shall be increased to ninety (90) days if the default is reasonably curable and the Lessee demonstrates to Lessor's reasonable satisfaction that the Lessee is diligently attempting to accomplish such a cure;

(e) Any representation or warranty (except the Representations contained in Section 5.2(b)) made by the Lessee herein, in the Participation Agreement, in any other Operative Agreement to which Lessee is a party, or in the Purchase Order Assignment or in any statement or certificate furnished to the Lessor or the Note Purchaser pursuant to or in connection therewith is untrue in any material respect as of the date of issuance or making thereof, and is material at the time in question and remains uncured;

(f) The occurrence of an Event of Default under one of the Coal Purchase Agreements not cured within ninety (90) days, it being agreed, however, that cure shall be deemed to have been effected if, within ninety (90) days following the

occurrence of such Event of Default under a Coal Purchase Agreement, the Lessee is able to and does provide additional security to the Lessor which, in the sole determination of Lessor, is of comparable value to the Coal Purchase Agreement without reference to default;

(g) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes a general assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or the major part of its property;

(h) A custodian, trustee or receiver is appointed for the Lessee or for a major part of its property and is not discharged within thirty (30) days after such appointment;

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against the Lessee and, if instituted against the Lessee, are consented to or are not dismissed within sixty (60) days after such institution;

(j) A final, non-appealable judgment for payment of money in excess of \$1,000,000 shall be rendered against the Lessee by a court having jurisdiction over the Lessee, and such judgment shall remain unsatisfied for a period of sixty (60) days during which the time period for execution has not been stayed;

(k) The Lessee shall be in default at any one time in the payment of any one or more debt obligations or lease obligations the outstanding principal amount (in the case of leases, determined on the bases of nondiscounted aggregate rentals) of which is, in the aggregate, in excess of \$1,000,000, and the period of grace, if any, with respect thereto in each case at such time shall have expired.

13.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor, at its option, may declare this Lease in default and:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees;

(b) No sooner than ninety (90) days following a declaration in the case of an Event of Default described in section 13.1(a), provided that such declaration is no more than the sixth such declaration hereunder and provided further that no such declaration has been made within the

three previous years, and immediately upon a declaration in the case of any other Event of Default, by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may without notice enter upon the premises of the Lessee or other premises where the Units may be located and take possession of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successor or assigns, to use the Units for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify, (x) a sum which represents the excess of the present worth, at the time of such termination, of all rentals for the Units which would otherwise have accrued hereunder from the date of such termination to the end of the Lease Term over the then present worth of the then Fair Rental Value of the Units for the period beginning with

the point in time when the Units could reasonably be released by Lessor (such period to begin not less than 3 months after the date Lessor regains possession of the Units) and ending with the originally scheduled termination of the Lease Term, computed by discounting from the end of the Lease Term to the date of such termination or re-lease period, as the case may be, such present worth to be computed in each case on a basis of a per annum discount rate equal to ten percent (10%), compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of the Units as of the most recent rental payment date on which Rent was paid in full over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold the Units, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding causes (x) and (y) of the part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay and the Lessee shall pay, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of the Units as of the most recent rent payment date on which Rent was paid in full over the net proceeds of such sale and (ii) all Supplemental Rent which may be due and owing and any damages and expenses, other than for a failure to pay rental, in addition thereto

and for all costs and expenses, including legal fees incurred in the exercise of any such remedies; and/or

(c) No sooner than ninety (90) days following a declaration in the case of an Event of Default described in Section 13.1(a), provided that such declaration is no more than the sixth such declaration hereunder and provided further that no such declaration has been made within the three previous years, and immediately upon such declaration in the case of any other Event of Default, foreclose upon or exercise any right or remedy granted to it hereunder or by law to enforce the security interest granted to it pursuant to Section 19 hereof, and apply amounts realized in connection therewith, after payment of all costs or expenses, including reasonable attorneys' fees, incurred in so doing, to amounts owed pursuant to Section 13.2(b).

For purposes of Section 13.2 above, the Fair Rental Value and Fair Market Value for the Units shall be determined on the basis set forth in Section 17.3 hereof; provided that any sale in the commercially reasonable manner of the Units prior to any such determination shall conclusively establish the Fair Market Value of the Units and any rental in a commercially reasonable manner of the Units prior to any such determination shall conclusively establish the Fair Rental Value of the Units.

At any sale pursuant to this Section, the Lessor or the Note Purchaser may bid for and purchase the Equipment. To the extent

permitted by applicable law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Equipment in mitigation of the Lessee's damages as set forth in this Section or which may otherwise limit or modify any of the Lessor's rights and remedies in this Section. It is further agreed that insofar as notice of any such sale shall by law be required to be delivered to Lessee, ten (10) days' notice shall be deemed commercially reasonable.

13.3. Further Cure. In the event that Lessee shall, prior to the time Lessor shall have the right to exercise the remedies set forth in paragraphs (b) and (c) of Section 13.2, cure the Event of Default giving rise to the right to exercise such remedies, and if at such time no other Event of Default shall have occurred and be continuing hereunder (other than an Event of Default relating solely to the non-payment of any amount which became due solely because of the declaration of such Event of Default), the Lessor shall rescind and annul such declaration and its consequences (but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon), and in such event the Lessee shall promptly pay to the Lessor or the Note Purchaser an amount equal to their reasonable expenses incurred in connection with such Event of Default or declaration thereof.

13.4. Cumulative Remedies. The remedies provided the Lessor in this Lease shall not be deemed exclusive, but shall be

cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the Rental payments due hereunder, and agrees to make the Rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Units. In addition to any other remedies provided herein or otherwise available to Lessor at law or in equity, Lessee shall pay the reasonable attorney's fees and expenses incurred in connection with any Event of Default.

13.5. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.6. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor and the Note Purchaser promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature of status thereof. For the purposes of this Section 13.6 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or

obligation of the Lessee contained in this Lease, any corporate officer of Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 14. RETURN OF UNITS UPON DEFAULT.

14.1. Lessee's Duty to Return. If this Lease shall be terminated by reason of any Event of Default, the Lessee shall forthwith deliver possession of the Units to the Lessor at a location designated by Lessor, but at the Lessee's risk and expense. The Units shall be in the condition required by Section 12 hereof. For the purposes of delivering possession of the Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) With respect to all of the Equipment, promptly submit to Lessor and Note Purchaser a detailed inventory thereof, if appropriate, dismantle in a manner so as to permit its re-erection, including, as appropriate, match marking and packaging the same, and promptly submit to Lessor and Note Purchaser the maintenance logs required by Section 7 hereof.

(b) Forthwith place the Units in such reasonable storage place or places within the continental United States as the Lessor may designate or, in the absence of such designation, as the Lessee may reasonably select;

(c) Return to Lessor all plans, specifications, operating manuals and other literature held by Lessee which relates to the operation of the Units; and

(d) Provide storage at the risk of the Lessee at such storage place or places without charge for insurance, rent or storage for a period ending five years following return of the Units to Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 10.1 hereof.

All amounts earned in respect to the Units after the date of termination of this Lease shall belong to the Lessor, and if received by the Lessee, shall be promptly turned over in accordance with the terms hereof.

14.2. Specific Performance. The gathering, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application of any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to gather, deliver, store and transport the Units.

14.3. Lessor Appointed Lessee's Special Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, the Lessee hereby irrevocably appoints the Lessor and Note Purchaser as the special agents and attorneys of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of the

Units to the Lessor, to demand and take possession of the Units in the name and on behalf of the Lessee from whosoever shall be at the time in possession of the Units.

SECTION 15. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor and security interests may be granted in the Units in accordance with the Participation Agreement. Lessee hereby agrees and consents to the Lessor's assignment of certain of its rights hereunder and the grant of a security interest in the Equipment to the Note Purchaser pursuant to the Security Agreement (and all successors in interest to the Note Purchaser), as a consequence of which the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the Note Purchaser as provided in Section 2 hereof. The Lessee acknowledges and agrees that (a) the rights of Note Purchaser in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure or of defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Units or any part thereof, or any damage to or loss or destruction of the Units or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising (including any breach by Lessor of any of its obligations

hereunder), of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay Note Purchaser all of the rents and other sums which are the subject matter of the assignment, (b) unless and until the Lessee shall have received written notice from the Note Purchaser that the assignment has been released: (i) no amendment or modification of, or waiver by or determination of satisfaction by or request from or termination under Section 17.5(d) hereof or election, approval or consent of or other action by the Lessor in respect of any of the provisions of this Lease shall be effective unless Note Purchaser shall have joined therein in writing or shall have given its prior written consent thereto; provided, however, that if an Event of Default or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the sole right to make or give such amendment, modification, waiver, determination of satisfaction, request, termination, election, consent, approval or like action shall be vested in the Note Purchaser; and (ii) Note Purchaser shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Note Purchaser) are permitted or provided to be exercised by the Lessor; provided that such exclusive right of exercise shall not apply with respect to suits for damages in respect of Excepted Rights in Collateral as defined in the Security Agreement, and (c) except in cases

where the Lessor assigns all of its right, title and interest in the Units and the Lease in accordance with the terms hereof, all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of Note Purchaser in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the rights of the Lessee under this Lease to the Units.

SECTION 16. ASSIGNMENTS BY LESSEE: USE AND POSSESSION.

16.1. Lessee's Rights to the Units. Notwithstanding any sublease of the Units or assignments of this Lease, Lessee acknowledges that it remains primarily obligated hereunder. So long as no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Units except to the extent permitted by Section 16.2 hereof. The Lessee also shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer to allow to pass out of its possession or control, the Units, except to the extent permitted by Section 16.2 hereof.

16.2. Use and Possession by Lessee. The Lessee agrees that the Units will be used by it and any assignees or sublessees permitted hereby solely within the continental limits of the United States of America. The Lessee further agrees that it will not assign this Lease or any of its rights hereunder or sublease all or any Unit of the Equipment to any party, without obtaining the prior written consent of the Lessor. Notwithstanding the previous sentence, the Lessee may, without obtaining the prior written consent of the Lessor, (a) sublease all or any part of the Group A Units to any Person for up to 90 days during any period in which such Group A Units are not needed by the Lessee for making deliveries of coal to one of the Buyers or any other member of the Lessee, and (b) sublease the 47 Open Top Gondola Rail Cars identified on SCHEDULE A hereto and the Locomotives to SF Coal Corporation pursuant to the Equipment Lease dated as of July 19, 1984, as amended, between the Lessee and SF Coal Corporation, (c) sublease all or any of the Units to any company which is owned by or which is commonly owned with the Lessee to the extent of fifty percent (50%) or more of its voting rights or which is a member/owner of the Lessee (collectively, an "Affiliate"), and (d) assign this Lease to any survivor, successor or transferee of the Lessee as a result of a merger or consolidation permitted by Section 5(d) of the Participation Agreement. Every sublease permitted by clauses (a), (b) or (c) of this Section 16.2 shall contain or be accompanied by an agreement of the sublessee to the effect that the rights of such sublessee in and to the Units covered thereby is subordinate to this Lease and to the interests of the Lessor and

to
date

Note Purchaser in and to such Units, and by an agreement of such sublessee to permit the Lessor and the Note Purchaser to inspect such Units at the location of the sublessee and granting to the Lessor and Note Purchaser a license to enter identical to that contained in Section 11.3 hereof. Each sublease permitted by this Section 16.2 shall also, by its terms, expire upon the expiration or other termination of the Lease Term for the Units covered by such sublease and, in the case of any sublease to a member/owner of the Lessee, when such member/owner ceases to be a member in good standing of the Lessee. Any sublease permitted by clause (a) or (c) of this Section 16.2 shall be made only upon written notice to Lessor, executed by Lessee, (i) identifying the sublessee, the Units being subleased and the term of such sublease, and (ii) stating that such sublease does not release Lessee from any of its obligations under this Lease.

SECTION 17. RIGHT OR PURCHASE OPTION; RENEWAL OPTIONS; EARLY TERMINATION.

17.1. Purchase Option. So long as this Lease shall not have terminated, the Lessee shall have the option following the expiration of the Lease Term (or any renewal period) for any Units, upon written notice to the Lessor given at least 360 days prior to such expiration, of its intention to purchase all or any part of ~~such~~ Units, by paying to the Lessor in immediately available funds the Fair Market Value (as hereinafter defined) thereof (provided, that in determining such Value, the Units shall be deemed to be in the condition in which they are required to be returned pursuant to Section 12 hereof and to be free and clear of

the Group B
and the Locomotives, or, with reference to the Group A Units, all ⁶³ but not less than all of such Units at the same location,

all liens, claims and encumbrances), plus all other sums then owing hereunder. The Lessee shall be solely responsible for any sales or other taxes or charges applicable to the transfer. Upon determination of the Fair Market Value of such Units, the Lessee shall have the option to rescind its notice of intention to purchase such Units, provided that no such rescission may be made within 90 days prior to the expiration of the Lease Term and upon such rescission the Lessee must then reimburse the Lessor for all of its expenses in connection with the determination of such value, including appraisal costs pursuant to Section 17.3, and provided further that, upon such rescission, Lessee shall not be entitled to renew the Lease Term with respect to such Units. Failing such recession the Lessee shall purchase the Units and pay the Fair Market Value determined for such Units on the expiration date of the Lease Term, and upon such payment the Lessor shall transfer to the Lessee, all of its right, title and interest in and to the equipment on an "as-is, where-is" basis and without recourse or warranty except for the absence of liens created by or through the Lessor. Lessor further agrees to execute a bill of sale and such other documents as are reasonably necessary to accomplish the foregoing.

17.2. Renewal Options. Provided that no material or matured Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have, upon written notice to the Lessor given at least 360 days

prior to the expiration of the Lease Term (or any renewal period)
for any Units, the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease with respect to all or any part of the Units for two additional terms of five years each, subject to all of the terms and conditions herein contained for the original Lease Term, except that: (i) the Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Units, and such Fixed Rental shall be payable annually, in advance; and (ii) the Casualty Value payable with respect to such Units for and during any such renewal term in respect of any Casualty Occurrence during such term shall be determined by the agreement of the Lessor and Lessee; and

Group
B

and the
Locomotives,
or, with
respect
to the
Group
A Units,
all but
not less
than all
of such
Units
at the
same
location,

(b) The Lessee shall have the option, in lieu of the option set forth in (a) above, to renew and extend the term of this Lease with respect to all or any part of the Units for such additional term of one or more years as the Lessee shall determine, subject to all of the terms and conditions herein contained for the original Lease Term, except that the Fixed Rental payable for and during any such renewal term shall be an amount equal to one-half (1/2) of the Fixed Rental applicable to such Units during the last year of the original Lease Term, and the Casualty Value payable with respect to such Units for and during any such renewal term in respect of any Casualty Occurrence during such term shall be determined by the agreement of the Lessor and Lessee;

Group
B

provided, that, for renewals governed by clause (b) of this Section 17.2, (i) the aggregate term of this Lease (including all renewal terms) with respect to such Units shall not exceed eighty percent (80%) of the useful life of such Units, and (ii) at the time of entering into any renewal of the Lease the residual value of such Units upon expiration of such renewal period shall be, in the reasonable estimate of the Lessor, equal to at least 20% of the Equipment Cost thereof.

17.3. Fair Market and Fair Rental Value. The Fair Rental Value or Fair Market Value, as the case may be, of the Units shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession), and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 300 days prior to expiration of the Lease Term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of the Units, such value shall be determined as follows: the Lessor and the Lessee shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement; however, if no such appraiser is so appointed on or before 280 days prior to the expiration of the Lease Term, the Lessor and the Lessee shall each appoint, at their own expense, an independent appraiser on or before 260 days prior to the expiration of the Lease Term, and the two appraisers so appointed shall, within 15 days after

their appointment, appoint a third independent appraiser. Such appraiser(s) shall be instructed to make a determination of the Fair Market Value or the Fair Rental Value within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. Except as otherwise provided in Section 17.1, the expenses and fees of the appraiser, in any case in which a single appraiser is agreed upon, and of the third appraiser, in any case in which three appraisers are chosen, shall be borne equally by the Lessee and the Lessor. If the parties have appointed a single appraiser, such appraiser's determination shall be final and binding on the parties. If three appraisers are appointed, the values determined by each of the three appraisers shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final and, except as otherwise provided in Section 17.1, binding on the parties.

17.4. Delivery of Units. If the Lessee has not elected to purchase any of the Units then leased hereunder as provided in Section 17.1, or to renew this Lease with respect to such Units as provided in Section 17.2, all of such Units shall be returned to the Lessor at the end of the original Lease Term, or the then current renewal term, as the case may be, in accordance with Section 12 hereof.

17.5. Early Termination Option

(a) The Lessee may, at any time on or after January 1, 1990, on at least 180 days prior written notice to the

Lessor, express its intention to terminate this Lease on any rent payment date thereafter with respect to any Unit then leased hereunder; provided, however, that the Lessee may not give such a notice with respect to Group A Units more than once in each calendar year, except that two such notices may be given in any three calendar years with respect to Group A Units. Except as provided in Section 17.1(b), such termination shall be effective on the first rent payment date following such 180-day period (the "Termination Date"). During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of such Units. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling such bid related obligations. On the Termination Date, and subject to payment of the Termination Value, the Lessor shall sell such Units without recourse or warranty, for cash, to whosoever shall have submitted the highest bid prior to such date, and thereupon the Lessee shall deliver such Units so sold to the Lessor in accordance with the provisions of Section 12 of this Lease.

(b) The total sale price realized at any such sale shall be paid in accordance with Section 2 hereof, and, in addition, the Lessee shall pay as provided in Section 2, (i) the amount, if any, by which the Termination Value set forth

in SCHEDULE E for the Units (the "Termination Value") exceeds the proceeds of such sale, if any, less all expenses incurred by the Lessor in selling the Units, and (ii) all rentals or other sums, including Supplemental Rent, due hereunder on or prior to such date and then remaining unpaid. In the event no such sale takes place by the Termination Date, Lessor shall retain title to the Units and the Lessee, at its option (which must be exercised on or before such Termination Date), may keep the Lease in effect with respect to such Units or pay the Termination Value and such other amounts on the Termination Date and thereby terminate the Lease with respect to such Units. The obligation of the Lessee to pay Fixed Rental with respect to the Units shall continue undiminished until payment of the sale proceeds and all or any portion of the Termination Value, if any, payable hereunder to the Lessor. The Termination Values include compensation to the Lessor for all regular Rental payments accruing through the Termination Date. Upon the payment of all amounts required to be paid by the Lessee pursuant to this paragraph (b), and all other sums then owing from Lessee under this Lease, the obligation of the Lessee for all subsequent Fixed Rental Payments with respect to the Units due and payable after, but not on or before, the Termination Date shall cease.

(c) The Termination Value for any Unit of Equipment shall be the percentage of Equipment Cost of the Unit set forth opposite the applicable Basic Rent Date as set forth in Schedule D.

(d) Notwithstanding any other provisions of this Section 17.5, (i) at any time following notice by Lessee of the Early Termination, up to and including the Termination Date, Lessor, by written notice to Lessee, may elect to terminate this Lease on the Termination Date rather than sell the Units, and (ii) no sale pursuant to this Section 17.5 may be made to Lessee or any of its Affiliates. In the event of an Early Termination in which the Lessor elects to terminate this Lease rather than sell the Units, Lessee shall return the Units pursuant to Section 12.

SECTION 18. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any late payment of sums due hereunder, or amounts expended on behalf of the Lessee pursuant to Section 20.2 hereof, shall result in the additional obligation on the part of the Lessee to pay also an amount calculated on the basis of the greater of (a) 20% per annum and (b) two percentage points above the rate at such time in effect under the Note (but in no event greater than the maximum lawful rate) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid, which amount shall be payable to the Person entitled to receive sums paid late or who expended such amount on behalf of Lessee.

SECTION 19. SECURITY FOR LESSEE'S PERFORMANCE.

19.1. As security for the performance of its obligations under this Lease, the Lessee hereby grants to the Lessor a security interest in and assigns to the Lessor, all of its right, title and interest in and to (i) any sublease for any of the Units and (ii) the Coal Purchase Agreements, the Coal Delivery Contract and other similar agreements assigned to Lessor from time to time. Lessee further acknowledges and agrees that such security interest extends to the right, upon the occurrence of any Event of Default hereunder, subject to the restrictions as to timing set forth in Section 13.2(c) hereof, to receive and collect all payments assigned pursuant to this Section 19 made under such subleases and apply the same to payments of Lessee's obligations under this Lease, and to take such action, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the terms hereof or of such subleases or by law. It is the intent and purpose hereof that this assignment shall be effective and operative immediately, without further act or instrument, upon the execution of any such sublease, and shall continue in full force and effect throughout the term of each such sublease, and the Lessor, or Note Purchaser pursuant to the terms of the Security Agreement, shall have such rights until all amounts due and owing hereunder shall have been fully paid and discharged. Lessee shall promptly deliver to Lessor the original of any sublease for any of the Units having a term (including renewal period) in excess of six months.

19.2 Lessee shall be responsible for all reasonable costs and expenses, including legal fees, incurred by Lessor and Note Purchaser in connection with the review of any comparable security offered as contemplated by Section 13.1(f) hereof or otherwise incurred in connection with issuing any consent, acknowledgment or waiver hereunder related to the security referred to in this Section 19.

19.3. Lessee shall at its cost and expense file and refile all financing statements and confirmation statements necessary to maintain in favor of ~~donee~~ and Note Purchaser a perfected security interest in the subleases and coal purchase agreement assigned under Section 19.1 hereof.

Lessor

SECTION 20. MISCELLANEOUS.

20.1. Notices; Wire Transfer Instructions. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been duly given when delivered personally or on the second (2nd) business day following deposit in the United States Mail, registered mail, addressed as follows:

If to Lessor: Heleasco Twenty-Three, Inc.
3411 Silverside Road
Weldin Building, Suite 201
Wilmington, Delaware 19810
Attention: President

With a copy to: Helios Capital Corporation
Two Radnor Corporate Center
100 Matsonford Road
Radnor, Pennsylvania 19087

If to Lessee: Western Fuels Association, Inc.
700 Jefferson Building
1225 19th Street, N.W.
Washington, D.C. 20036
Attention: General Manager

In all such cases with a copy to:

the Note Purchaser Wichita Bank for Cooperatives
Farm Credit Banks Building
151 North Main Street
Wichita, Kansas 67202
Attention: Senior Vice
President and Treasurer

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing. Any payment due to the Lessor or the Note Purchaser hereunder shall, until the Lessee receives written notice from such party specifying different instructions, be made pursuant to the instructions set for in Section ____ of the Participation Agreement.

20.2. Right to Perform. If an Event of Default shall occur hereunder, either the Lessor and the Note Purchaser may, but shall not be obligated to, make advances in respect of the same and take all such action as may be necessary in respect of the same. Any payment so made by any such party and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as Supplemental Rent hereunder, with interest at the rate at such time in effect for overdue payments under Section 18 hereof.

20.3. Counterparts; Uniform Commercial Code. This Lease may be executed in any number of counterparts, each counterpart constituting an original but all together one and the same

instrument and contract; provided, however, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Note Purchaser on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code.

20.4. Law Governing. This Lease shall be construed in accordance with the Laws of the State of Wyoming; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

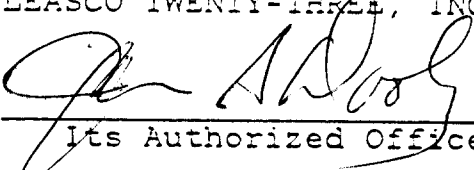
20.6. Priority of Payments. Lessee agrees that to the extent that its financial resources are ever inadequate to satisfy all of its financial obligations hereunder, priority shall be given to the payment of Rental then due and owing hereunder.

20.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

HELEASCO TWENTY-THREE, INC.

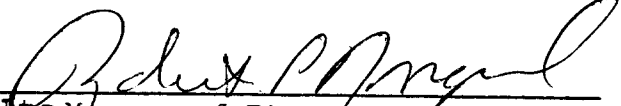
By


Its Authorized Officer

LESSOR

WESTERN FUELS ASSOCIATION, INC.

By:


Its Manager of Finance and Administration

LESSEE

ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA, ss:

On this 5th day of December 1984, before me personally appeared Robert P. Norrgard, to me personally known, who being by me duly sworn, says that he is Manager of Finance and Administration of Western Fuels Association, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Jacqueline G. Behrens
Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA, ss:

On this 5th day of December 1984, before me personally appeared James S. Dooley, to me personally known, who being by me duly sworn, says that he is Attorney-in-Fact for Heleasco Twenty-Three, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Jacquelyn G. Behrens
Notary Public

My Commission Expires: _____

DESCRIPTION OF EQUIPMENT

First Delivery Date Equipment:

Group A:

47 Gondola Cars - manufactured by Ortner Freight Car Company; 100 ton, open top, steel, solid bottom, 4000 cubic foot capacity; rotary dump.

Second Delivery Date Equipment:

Group A:

115 Dual Service Coal Cars - manufactured by Ortner Freight Car; 3800 cubic foot capacity, steel, hopper cars; combination rotary dump/rapid discharge.

21 Hopper Coal Cars - manufactured by Ortner Freight Car; 3800 cubic foot capacity, steel, rapid discharge hopper cars.

3 Diesel Locomotives - SD 40-2, manufactured by General Motors and reconstructed with a new warranty provided by Morrison-Knudsen; 3000 hp.

Group B:

Mining Equipment - Mine Air Heating
Antifreeze Storage Tank
Railroad Maintenance Equipment
Mine Pipeline
Utility Trailer
Mine Power Feeder Cable
Conveyor Structure
Continuous Miner
Conveyor Belt

SCHEDULE A
(to Equipment Lease)

RENTAL SCHEDULE NO. ____

RENTAL SCHEDULE NO. ____ to Equipment Lease dated as of December 5, 1984 (the "Lease") by and between the Lessor and Lessee identified below, the terms and conditions of which are hereby incorporated herein by reference. Lessee hereby (a) acknowledged that Lessee has requested Lessor to purchase from _____, the Manufacturer thereof, the equipment described herein (the "Equipment"), (b) agrees to lease such Equipment from Lessor effective the date herof and (c) agrees (subject to adjustment pursuant to Section 2.1(c) of the Lease) to pay Lessor the rent, including the Fixed Rental, in the amounts specified below, for each item of Equipment, at the times specified in the Lease. All of the terms used herein which are defined in the Lease shall have the same meaning as so defined.

<u>Description</u>	<u>Identifying Numbers</u>	<u>Equipment Cost</u>
--------------------	----------------------------	-----------------------

Installments of Fixed Rental with respect to the Equipment shall be in the amount of \$_____ on January 1, 1985 and \$_____ on the first day of each month thereafter through and including the Rent Adjustment Date. Thereafter, the Fixed Rental with respect to the Equipment will be established pursuant to Section 2.1 of the Lease, and on or before the Rent Adjustment Date a supplement to this Rental Schedule No. ____ will be executed by the parties.

The Schedule of Casualty Values attached hereto is hereby confirmed.

The Location of Equipment:

HELEASCO TWENTY-THREE, INC.
(LESSOR)

WESTERN FUELS ASSOCIATION, INC.
(LESSEE)

By _____

By _____

Dated:

Dated:

SCHEDULE B
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE

TO: Heleasco Twenty-Three, Inc., 3411 Silversede Road, Weldin
Building, Suite 201, Wilmington, Delaware 19810

I, a duly appointed and authorized representative of Western
Fuels Association, Inc. (the "Lessee") under the Equipment Lease
dated as of December 5, 1984 (the "Lease") between Heleasco
Twenty-Three, Inc. (the "Lessor"), and the Lessee, do hereby
certify that I have caused to be inspected, received, approved and
accepted delivery under the Lease of the following Unit(s) of
Equipment:

TYPE OF EQUIPMENT:

MANUFACTURER:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

DESCRIPTION AND IDENTIFYING NUMBER: _____ to
_____ (inclusive)

I do further certify that the foregoing Equipment is in good
order and condition, and appears to conform to the specifications
applicable thereto, that the Lessee has no knowledge of any
defect in the Equipment with respect to design, manufacture,
condition or in any other respect, and that the Equipment has
been labeled by means of a plate or stencil printed in
contrasting colors upon each side of the equipment in letters not
less than one inch in height as follows:

"Leased from Heleasco Twenty-Three, Inc. as
Owner, and Subject to a Security Interest."

The execution of this Certificate will in no way relieve or
decrease the responsibility of the Manufacturer for any
warranties it has made with respect to the Equipment.

Dated: _____, 19__ WESTERN FUELS ASSOCIATION, INC.

Title: _____

SCHEDULE C
(to Equipment Lease)

SCHEDULE OF
CASUALTY VALUE FOR EQUIPMENT

The Casualty Value for any of the Units payable on the Basic Term Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percentage of the Equipment Cost of such Units set forth opposite such date in the attached schedule.

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM

TERMINATION/CASUALTY SCHEDULE

WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

	CASUALTY/ TERMINATION VALUE	CASUALTY/ TERMINATION VALUE % OF TOTAL ASSET COST
1JAN85	1,655,198	105.52225
1FEB85	1,670,821	106.51824
1MAR85	1,686,877	107.54182
1APR85	1,703,379	108.59384
1MAY85	1,722,709	109.82617
1JUN85	1,744,933	111.24304
1JUL85	1,770,714	112.88661
1AUG85	1,800,264	114.77051
1SEP85	1,831,599	116.76815
1OCT85	1,867,919	119.08363
1NOV85	1,909,731	121.74925
1DEC85	1,954,907	124.62927
1JAN86	1,747,881	111.43093
1FEB86	1,760,735	112.25041
1MAR86	1,773,904	113.08998
1APR86	1,787,398	113.95024
1MAY86	1,804,619	115.04814
1JUN86	1,825,546	116.38224
1JUL86	1,850,991	118.00444
1AUG86	1,881,115	119.92489
1SEP86	1,913,046	121.96058
1OCT86	1,951,091	124.38599
1NOV86	1,995,893	127.24226
1DEC86	2,044,444	130.33745
1JAN87	1,792,640	114.28441
1FEB87	1,802,038	114.88357
1MAR87	1,811,717	115.50253
1APR87	1,821,776	116.14195
1MAY87	1,836,364	117.07196
1JUN87	1,855,416	118.28652
1JUL87	1,879,871	119.84557
1AUG87	1,909,850	121.75682
1SEP87	1,941,776	123.79216
1OCT87	1,980,859	126.28379
1NOV87	2,027,617	129.26471
1DEC87	2,078,304	132.49607
1JAN88	1,788,401	114.01421
1FEB88	1,793,979	114.34981
1MAR88	1,799,731	114.73652
1APR88	1,805,664	115.11473
1MAY88	1,816,692	115.81779

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM

TERMINATION/CASUALTY SCHEDULE

WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

10

	CASUALTY/ TERMINATION VALUE	CASUALTY/ TERMINATION VALUE % OF TOTAL ASSET COST
1JUN88	1,832,644	113.83479
1JUL88	1,854,543	118.23088
1AUG88	1,882,451	120.01006
1SEP88	1,912,195	121.90634
1OCT88	1,949,682	124.29616
1NOV88	1,995,391	127.21024
1DEC88	2,044,977	130.37141
1JAN89	1,723,605	109.88331
1FEB89	1,723,674	109.88770
1MAR89	1,723,728	109.89117
1APR89	1,723,768	109.89370
1MAY89	1,729,144	110.23645
1JUN89	1,739,422	110.89169
1JUL89	1,755,781	111.93462
1AUG89	1,778,071	113.35560
1SEP89	1,801,870	114.87289
1OCT89	1,833,420	116.88424
1NOV89	1,872,956	119.40477
1DEC89	1,915,901	122.14258
1JAN90	1,617,380	103.11124
1FEB90	1,616,723	103.06937
1MAR90	1,616,045	103.02615
1APR90	1,615,346	102.98157
1MAY90	1,619,448	103.24312
1JUN90	1,627,932	103.78398
1JUL90	1,641,883	104.67340
1AUG90	1,661,143	105.90124
1SEP90	1,681,751	107.21503
1OCT90	1,709,326	108.97302
1NOV90	1,744,056	111.18708
1DEC90	1,781,837	113.59574
1JAN91	1,563,229	99.65902
1FEB91	1,562,108	99.58754
1MAR91	1,560,961	99.51441
1APR91	1,559,788	99.43962
1MAY91	1,563,247	99.66014
1JUN91	1,570,914	100.14898
1JUL91	1,583,855	100.97396
1AUG91	1,601,898	102.12428
1SEP91	1,621,236	103.35709
1OCT91	1,647,293	105.01827

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM

TERMINATION/CASUALTY SCHEDULE

WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

	CASUALTY/ TERMINATION VALUE	CASUALTY/ TERMINATION VALUE % OF TOTAL ASSET COST
1NOV91	1,680,231	107.11811
1DEC91	1,716,104	109.40514
1JAN92	1,504,943	95.94316
1FEB92	1,503,323	95.83992
1MAR92	1,501,673	95.73472
1APR92	1,499,992	95.62754
1MAY92	1,502,759	95.80394
1JUN92	1,509,550	96.23687
1JUL92	1,521,404	96.99256
1AUG92	1,538,139	98.05951
1SEP92	1,556,111	99.20522
1OCT92	1,580,534	100.76224
1NOV92	1,611,544	102.73917
1DEC92	1,645,364	104.89529
1JAN93	1,442,230	91.94511
1FEB93	1,440,077	91.80785
1MAR93	1,437,888	91.66830
1APR93	1,435,663	91.52643
1MAY93	1,437,686	91.65543
1JUN93	1,443,536	92.02834
1JUL93	1,454,222	92.70960
1AUG93	1,469,553	93.68695
1SEP93	1,486,056	94.73906
1OCT93	1,509,722	96.18410
1NOV93	1,537,659	98.02887
1DEC93	1,569,271	100.04424
1JAN94	1,374,786	87.64543
1FEB94	1,372,063	87.47178
1MAR94	1,369,297	87.29549
1APR94	1,366,490	87.11653
1MAY94	1,367,715	87.19464
1JUN94	1,372,555	87.50319
1JUL94	1,381,989	88.10457
1AUG94	1,395,910	88.98574
1SEP94	1,410,737	89.93735
1OCT94	1,431,517	91.26214
1NOV94	1,458,227	92.96494
1DEC94	1,487,469	94.82912
1JAN95	1,302,394	83.02388
1FEB95	1,298,961	82.81138

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM

TERMINATION/CASUALTY SCHEDULE

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WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

	CASUALTY/ TERMINATION VALUE	CASUALTY TERMINATION VALUE % OF TOTAL ASSET COST
1MAR95	1,295,580	82.59586
1APR95	1,292,152	82.37730
1MAY95	1,292,521	82.40085
1JUN95	1,296,280	82.64048
1JUL95	1,304,370	83.15626
1AUG95	1,316,574	83.93429
1SEP95	1,329,811	84.77816
1OCT95	1,348,568	85.97395
1NOV95	1,372,889	87.52444
1DEC95	1,399,585	89.22641
1JAN96	1,224,425	78.05961
1FEB96	1,220,443	77.80570
1MAR96	1,216,407	77.54841
1APR96	1,212,317	77.28768
1MAY96	1,211,770	77.25279
1JUN96	1,214,373	77.41875
1JUL96	1,221,027	77.84293
1AUG96	1,231,499	78.51054
1SEP96	1,242,926	79.23906
1OCT96	1,259,516	80.29671
1NOV96	1,281,277	81.68400
1DEC96	1,305,248	83.21219
1JAN97	1,160,864	72.73238
1FEB97	1,136,192	72.43453
1MAR97	1,131,460	72.13289
1APR97	1,126,669	71.82743
1MAY97	1,125,148	71.73050
1JUN97	1,126,520	71.81792
1JUL97	1,131,640	72.14437
1AUG97	1,140,262	72.69404
1SEP97	1,149,758	73.29940
1OCT97	1,164,033	74.20944
1NOV97	1,183,057	75.42230
1DEC97	1,204,115	76.76476
1JAN98	1,051,327	67.02423
1FEB98	1,045,927	66.67999
1MAR98	1,040,462	66.33157
1APR98	1,034,931	65.97994
1MAY98	1,032,398	65.81686
1JUN98	1,032,453	65.82095
1JUL98	1,038,944	66.04353

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM

TERMINATION/CASUALTY SCHEDULE

WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

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	CASUALTY/ TERMINATION VALUE	CASUALTY/ TERMINATION VALUE % OF TOTAL ASSET COST
1AUG98	1,042,598	66.46775
1SEP98	1,050,039	66.94210
1OCT98	1,061,849	67.69502
1NOV98	1,077,959	68.72210
1DEC98	1,095,914	69.86677
1JAN99	955,568	60.91940
1FEB99	949,406	60.52657
1MAR99	943,173	60.12919
1APR99	936,868	59.72721
1MAY99	933,250	59.49658
1JUN99	931,935	59.41274
1JUL99	933,703	59.52547
1AUG99	938,274	59.81684
1SEP99	943,538	60.15248
1OCT99	952,737	60.73889
1NOV99	965,756	61.56894
1DEC99	980,422	62.50389
1JAN100	853,391	54.40542
1FEB100	846,439	53.96218
1MAR100	839,409	53.51405
1APR100	832,303	53.06099
1MAY100	827,563	52.75885
1JUN100	824,803	52.58287
1JUL100	824,761	52.58019
1AUG100	827,138	52.73171
1SEP100	830,113	52.92140
1OCT100	836,559	53.33236
1NOV100	846,320	53.95460
1DEC100	857,517	54.66842
1JAN101	744,701	47.47620
1FEB101	736,940	46.98142
1MAR101	729,098	46.48145
1APR101	721,174	45.97628
1MAY101	715,278	45.60039
1JUN101	711,018	45.32884
1JUL101	709,091	45.20598
1AUG101	709,178	45.21151
1SEP101	709,764	45.24890
1OCT101	713,333	45.47646
1NOV101	719,682	45.88118
1DEC101	727,249	46.36363

CHASE LEASE EVALUATION/ACCOUNTING SYSTEM
TERMINATION/CASUALTY SCHEDULE

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WESTERN FUELS ASSOC., INC.
RAIL EQUIPMENT-12/5/84 CLOSING
FILE-WESTERN4

	CASUALTY/ TERMINATION VALUE	CASUALTY/ TERMINATION VALUE % OF TOTAL ASSET COST
1JAN102	629,559	40.13564
1FEB102	620,987	39.58921
1MAR102	612,332	39.03741
1APR102	603,592	38.48024
1MAY102	596,522	38.02951
1JUN102	590,729	37.66015
1JUL102	586,975	37.42087
1AUG102	584,818	37.28331
1SEP102	582,988	37.16665
1OCT102	583,746	37.21500
1NOV102	586,738	37.40573
1DEC102	590,655	37.65545
1JAN103	509,076	32.45464
1FEB103	499,906	31.87002
1MAR103	490,584	31.27572
1APR103	481,107	30.67154
1MAY103	473,063	30.15871
1JUN103	465,931	29.70403
1JUL103	460,450	29.35462
1AUG103	456,615	29.11010
1SEP103	453,060	28.88347
1OCT103	451,652	28.79371
1NOV103	452,503	28.84801
1DEC103	454,193	28.95570
1JAN104	389,971	24.86146
1FEB104	381,929	24.34877
1MAR104	373,812	23.83130
1APR104	365,620	23.30903
1MAY104	358,622	22.86290
1JUN104	352,796	22.49148
1JUL104	348,430	22.21315
1AUG104	345,566	22.03051
1SEP104	343,120	21.87461
1OCT104	342,672	21.84603
1NOV104	344,380	21.95492
1DEC104	347,104	22.12857
1JAN105	313,725	20.00058